

I certainly hope, in view of what I have said this evening, that a real attempt will be made, because not only is the need overdue but, judging from what the Mt. Hawthorn electorate receives from the Treasury, there is an element of fairness in a case submitted for some services to be supplied to the residents of the district. In this instance, as I have pointed out, there is a case for deep sewerage to be installed throughout the rest of the electorate.

I now wish to refer to section 57A of the Traffic Act. Subsection (2) of that section reads as follows:—

No person shall, within a prescribed area, park a vehicle on land which is not a road, unless he has been authorised to do so by the owner, or person in possession of that land.

A penalty is provided where people breach that subsection. The section further provides that the owner of the land or a member of the Police Force has authority to remove a vehicle which transgresses that subsection.

As I understand it, the subsection is designed to protect those people whose homes happen to be situated close to a cricket ground, football ground, or some large sports ground at which people congregate in large numbers to watch the sport that is being played. The spectators travel to the grounds in cars, and the great majority of them park their vehicles in authorised places, but others leave their vehicles parked in laneways and the like to the great inconvenience and embarrassment of the residents in the locality, because they are unable to obtain ingress to, or egress from their properties for the duration of the game that is being played in the nearby sports ground.

Purely by accident the owners of these residences have found themselves in this dilemma for quite a long time. Subsection (2) of section 57A of the Traffic Act was framed with the intention that it would be a cure for the dilemma, but in fact it has proved to be no cure whatsoever. Technical difficulties have arisen. At least one of my constituents has been told that steps will be taken to amend this Act to make it workable at some future time, but I did not notice such a move mentioned in the Governor's Speech that was recently delivered. To me it does not seem to be a gargantuan task to make the subsection workable, and I hope that if some draft legislation is being prepared at present, or even if there is not, something will be done to rectify the existing ineffective provisions of section 57A of the Traffic Act.

Debate adjourned, on motion by Mr. Mensaros.

## PUBLIC ACCOUNTS COMMITTEE

### *Reply to Question: Correction*

SIR DAVID BRAND (Greenough—Premier) [8.44 p.m.]: Mr. Speaker, have I your permission to make a correction of an answer to a question without notice from the member for Pilbara this afternoon, in which he asked whether I intended to introduce legislation during the current session of Parliament to form a public accounts committee? My answer was, "Yes."

Actually, it is not intended that we introduce legislation, but that we amend the Standing Orders, and I am not sure whether the member for Pilbara was questioning me in detail. However, I want to make that correction.

I hope that those speakers who intend to speak to the Address-in-Reply debate will be ready, because, unless they are ready, this is their last chance.

*House adjourned at 8.45 p.m.*

## Legislative Council

Wednesday, the 19th August, 1970

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

### QUESTIONS (11): ON NOTICE

1. *This question was postponed.*

2. **IRON ORE**

#### *Hamersley Range Agreement: Commencement Date*

The Hon. H. C. STRICKLAND, to the Minister for Mines:

- (1) Has a commencement date been established for the Iron Ore (Hamersley Range) Agreement?
- (2) If so, what is the date?

The Hon. A. F. GRIFFITH replied:

- (1) Yes.
- (2) The 25th March, 1965.

3. **LAND**

#### *Taxation Valuations*

The Hon. F. R. WHITE, to the Minister for Mines:

- (1) Which municipal districts within the Metropolitan region were re-valued by the Taxation Department during the financial years ended—
  - (a) the 30th June, 1968;
  - (b) the 30th June, 1969; and
  - (c) the 30th June, 1970?

- (2) In which financial years were the revaluations mentioned in (1) above, adopted for taxation or rating purposes by—
- (a) the Taxation Department; and
- (b) the Local Authority?
- (3) Which municipal districts within the Metropolitan region will be revalued by the State Taxation Department during the financial years ending—
- (a) the 30th June, 1971;
- (b) the 30th June, 1972; and
- (c) the 30th June, 1973?

The Hon. A. F. GRIFFITH replied:

- (1) (a) Financial year the 1st July, 1967, to the 30th June, 1968:

Bayswater.  
Belmont.  
Canning.  
Kwinana.  
\*Mosmans.  
\*North Perth.  
\*Peppermint Grove.  
\*Perth Municipality (portion City-East Perth).  
Rockingham (Town).  
\*Swan (portion including Guildford).  
\*Subiaco.

- (b) Financial year the 1st July, 1968 to the 30th June, 1969:

Bassendean.  
\*Claremont.  
Cockburn.  
\*Cottesloe.  
\*East Fremantle.  
\*Leederville.  
Melville.  
\*Nedlands.  
\*North Fremantle.  
\*Perth Municipality (portion —North).  
Rockingham (Country).

- (c) Financial year the 1st July, 1969, to the 30th June, 1970:

Gosnells.  
Kalamunda.  
\*Perth Municipality (portion —City Beach).  
South Perth.

- (2) (a) The revaluations mentioned in 1(a), 1(b) and 1(c) above were adopted for Taxation purposes from the 30th June, 1967, the 30th June, 1968, and the 30th June, 1969 respectively.

- (b) The dates on which the revaluations were adopted by the local authorities are not known by this Department. However, this usually occurs twelve months after the dates adopted for Land Tax purposes.

The districts indicated with asterisks in question No. 1—i.e., Mosmans, North Perth, Peppermint Grove, Perth Municipality (portion City—East Perth), Swan, Subiaco, Claremont, Cottesloe, East Fremantle, Leederville, Nedlands, North Fremantle, Perth Municipality (portion—North), Perth Municipality (portion—City Beach)—were revalued for Land Tax purposes only. These values for various reasons are not adopted by the local authorities.

- (3) (a) Financial year the 1st July, 1970, to the 30th June, 1971:

Belmont.  
Fremantle City.  
Midland.  
Mundaring.  
Perth Shire.  
Victoria Park.  
Wanneroo.

- (b) and (c) Financial years the 1st July, 1971 to the 30th June, 1972, and the 1st July, 1972 to the 30th June, 1973:

The revaluation programmes for these years are not yet finalised.

4. *This question was postponed.*

5.

#### TELEVISION

##### *Carnarvon*

The Hon. G. W. BERRY, to the Minister for Mines:

- (1) What is the purpose of the tower being erected at the Carnarvon Post Office?
- (2) When will television be available in Carnarvon?

The Hon. A. F. GRIFFITH replied:

- (1) The tower is the Carnarvon terminal point of a radio telephone subscriber's service to Texada Salt Company at Lake MacLeod and Cape Cuvier.
- (2) In May, 1969, the Postmaster General announced that over a four year period ten additional country TV transmitters would be installed in Western Australia, including Carnarvon. No firm date is fixed as yet.

6.

#### EDUCATION

##### *Albany Senior High School*

The Hon. J. M. THOMSON, to the Minister for Mines:

- (1) Is the Government aware of the serious overcrowding of classrooms and usage of cloakrooms for such at the Albany Senior High School; and

(2) If the answer is "Yes" is the Education Department in possession of details appertaining to those requirements?

(3) In view of the reported lapse of time from now until the 1972-1975 triennium, when a second high school and technical school at Albany can be expected to be under construction, what plans has the Government got to meet the immediate and urgent classroom and other accommodation now required at that school?

(4) If the answer is that nothing is envisaged at the moment, will the Government give an undertaking to immediately review the position existing at the Albany Senior High School with intent to provide the urgently required accommodation at the earliest possible date?

The Hon. A. F. GRIFFITH replied:

(1) Yes. One cloakroom and the Youth Centre are in use for small groups.

(2) Yes.

(3) Additional accommodation in the form of demountable classrooms will be provided as needed for 1971.

(4) See answer to (3).

#### 7. VERMIN AND NOXIOUS WEEDS TAX

##### *Liability*

The Hon. F. R. WHITE, to the Minister for Mines:

(1) If a parcel of land, having an area of less than five acres, is used for primary production, is the owner liable for vermin and noxious weeds rates?

(2) If one owner has two adjoining properties, each less than five acres in area, but which together total more than five acres in area, and he uses these properties for primary production, does he have to pay vermin and noxious weeds rates?

The Hon. A. F. GRIFFITH replied:

(1) No.

(2) Yes.

#### 8. COMALCO SHARES

##### *Stamp Duty*

The Hon. H. C. STRICKLAND, to the Minister for Justice:

(1) Did Comalco Ltd. pay transfer duty on shares allotted to various people in Western Australia?

(2) If so, at what amount was each share valued for assessment purposes?

(3) If no duty was paid, did the company claim exemption under the Iron Ore (Hamersley Range) Agreement Act, 1963?

The Hon. A. F. GRIFFITH replied:

(1) There is no stamp duty payable on allotment of shares.

(2) and (3) Answered by (1).

9.

#### STUD PROPERTIES

##### *Taxation Exemption*

The Hon. F. R. WHITE, to the Minister for Mines:

Is the owner of rural zoned land which is used by him for the purpose of breeding, training and grazing of horses, in conjunction with the business of horse racing, eligible for exemption from State taxes as is the case for primary producers?

The Hon. A. F. GRIFFITH replied:

No—this type of business is not a business of grazing within the meaning and intention of Section 10(1) (g) of the Land Tax Assessment Act.

10.

#### EDUCATION

##### *Albany Junior Primary School*

The Hon. J. M. THOMSON, to the Minister for Mines:

(1) Does the Education Department propose to down-grade the Albany Junior Primary School as from the commencement of the next school year?

(2) If so, has any consideration been given to redesign of the existing boundaries whereby additional children would attend this school and thus retain its present grading?

(3) If no consideration has been given to the redesign of boundaries, will the Department undertake to do so with a view to using to the fullest extent the classroom accommodation available at this school?

The Hon. A. F. GRIFFITH replied:

(1) Yes.

(2) No. Albany Junior Primary School is situated in the centre of the Albany township and it is not proposed to build up the enrolment of schools in the centre of the town area by altering boundaries.

(3) No. The Education Department does not favour a policy which will maintain the enrolment at the two Albany schools in the centre of the town area.

11.

## LAND

*Taxation Valuations*

The Hon. F. R. WHITE, to the Minister for Mines:

What would be the unimproved capital value, for taxation purposes, of a property with a market value of \$30,000 having improvements of \$15,000, taking into consideration that a nearby comparable property, which has no improvements, also has a market value of \$30,000?

The Hon. A. F. GRIFFITH replied:

The unimproved value of land is ascertained by comparison with sales of comparable lands taking into account all the various factors affecting the value.

The example mentioned in the question is hypothetical and it is not possible to answer without all the relevant details.

source of all; that is, experience. So perhaps some of what I have to say may serve as a guide to those who may find they want to know more about probate and estate duties.

In England today the term "estate duty" is used to cover all the multitude of duties which arise on the death of a person. That is to say, it covers all the duties formerly known in England as probate duty, account duty, temporary estate duty, settlement estate duty and legacy, and succession duty. Legacy duty was first imposed in England in 1796 and in 1894 the term "estate duty" was used to define general death duties. Now in England and Scotland the term "estate duty" covers all the multitude of death duties.

Tasmania and New South Wales brought in probate duty in Australia in 1865 and this was copied by the other Australian colonies until by 1895 they all had probate duty as part of their law.

The Commonwealth did not introduce death duties until 1914, and one may ask why the Commonwealth entered this field. This is made clear by a perusal of the *Commonwealth Parliamentary Debates* of 1914 in which it is shown quite clearly that estate duty was introduced on a year-to-year basis as a purely wartime measure. The then Prime Minister and Treasurer (Andrew Fisher) at page 1339 of Vol. 75 of the *Commonwealth Parliamentary Debates*, had this to say when he introduced the Bill—

With regard to the revenue it is intended to raise £1,000,000 by imposing probate and succession duties. I feel sure that this form of tax will be accepted by the country as a fair and reasonable one to be imposed during the war.

So the Commonwealth in 1914 as a wartime measure imposed death duties on all estates with a net value exceeding £1,000, and this wartime measure is still with us today.

The Hon. J. Dolan: We are still at war.

The Hon. A. F. Griffith: That is similar to other wartime measures which are still with us.

The Hon. I. G. MEDCALF: It was made quite clear in the debates that there would be a very heavy deficit as a result of the war. Whereas immediately prior to the war there had been a surplus in the annual Estimates of approximately £2,000,000, in 1914 there was an estimated deficiency of £13,000,000, so this measure was accepted by the public on that basis.

The position in Western Australia as far as the average citizen is concerned is that there are two main categories of death duties. Firstly, there is what is called probate duty, which is a State tax and is assessed under the Administration Act, 1903-66. Secondly, there is Commonwealth estate duty, which is assessed under the Estate Duty Assessment Act, 1914-1970.

## ADDRESS-IN-REPLY: SIXTH DAY

*Motion*

Debate resumed, from the 18th August, on the following motion by The Hon. S. T. J. Thompson:—

That the following Address be presented to His Excellency:—

May it please Your Excellency: We, the Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled, beg to express our loyalty to our Most Gracious Sovereign and to thank Your Excellency for the Speech you have been pleased to deliver to Parliament.

**THE HON. I. G. MEDCALF** (Metropolitan) [4.44 p.m.]: I would like to speak to-day on the subject of probate and estate duty. I am aware that this is not a very original subject, but I have been prompted to choose it for my address because I have been astonished at the number of people who not only do not understand the intricacies of the subject but also do not even understand the rudiments. In addition, I have been astonished by the number of people who have asked me where they can obtain some ready material from which to obtain some knowledge of this subject.

I have endeavoured to help them, but apart from odd newspaper articles, very little is available which the lay member of the public can obtain in order to answer the questions he or she has on this topic. No pamphlet is readily available which gives in one source all the details of Commonwealth estate duty and State probate duty, and it is difficult for even the professional administrator to find out all he wants to know about the subject and, in fact, usually he has to rely on that best

Before dealing with the details of the legislation, I would like to refer to some oft-heard arguments on the subject of death duties. The first proposition that one frequently hears in public discussion is that probate and estate duty should be abolished because they are iniquitous taxes. Saying that they are iniquitous taxes is no reason at all for their abolition. This is merely a descriptive phrase which is used by people who object to paying probate and estate duty.

The Hon. L. A. Logan: It could be applied to any tax.

The Hon. I. G. MEDCALF: Exactly; and we have already heard it applied to land tax and, doubtless, we have all heard it applied from time to time to income tax. It is, in fact, a favourite subject with debating societies. The proposition usually is that all taxes are iniquitous. I suppose that all of us at one time or another would have agreed with that proposition.

It is quite easy to say that estate duty is an iniquitous tax, just as we can say that income tax is an iniquitous tax in that it destroys initiative and stops people from working at weekends or from working overtime because they will only have to pay more tax. Few of us are happy about having to pay income tax, but more people pay income tax than pay death duties, because death duty provisions only commence to operate at a figure of \$15,000 where there are dependants. Consequently, anyone having dependants and an estate below \$15,000 does not have to pay any State probate duty. Also, there is no Federal estate duty if the estate is valued below \$20,000.

Perhaps a better reason for the abolition of death duties would be that the loss of the breadwinner is itself a sufficiently severe blow to the family without the family having to find moneys to pay to the State at the same time. Although this is a very potent argument in cases where the breadwinner dies and leaves a number of dependants, it loses its force where the breadwinner has no dependants.

Next, one hears what might be called the social argument in favour of death duties; namely, death duties are a good thing because they are a tax on wealth. The proposition runs along the lines that men are acquisitive by nature and some are more acquisitive than others. Also, that some manage to acquire a large portion of the world's goods, either by good fortune or good management. Therefore—it is said—on their death it is only fair that the State should take back for the use of the people as much of that wealth as it is reasonably able to obtain.

However, one may well question whether that argument is very relevant today, particularly in view of high income taxes. After all, with the exception of the Com-

monwealth, death duties were brought in long before we had laws on income tax. Generally speaking, income taxes continue to increase and, hence, the amount available for individuals to save becomes less and less. In these circumstances, perhaps that social argument is not as relevant today as it once was. On the other hand, of course, there are still some big estates and, doubtless, there is a case for retaining death duties in the case of big estates.

What would happen to the State Government's revenue if it were simply to vacate the field of probate duty? If we take a responsible view we must ask: Where would the revenue come from to satisfy all the multifarious requests that are made to the State? These requests come in daily—sometimes several times a day—and weekly. We know that requests are made for all manner of things; we hear them in this Parliament. There are requests for additional aid for the victims of the Meckering earthquake; requests for higher salaries for school teachers; requests for assistance to the Kindergarten Union; and requests for funds for drought relief. Any member could mention any number of requests in addition to these. Hence, the State's revenue must be retained in sufficient degree to meet the reasonable requests which it receives.

The State no longer has access to the income tax field. In fact, the revenues of the State are severely limited and restricted. Whilst it may be possible for the Commonwealth perhaps to vacate the field of estate duty, as we are situated at present it appears quite out of the question for the State simply to give up this field without some additional source of revenue being provided.

However, so far as the Commonwealth is concerned, I think a good case can be made out for the Commonwealth vacating this field, perhaps progressively or perhaps immediately. Commonwealth revenue continually increases by virtue of the increasing national product and the increasing national income. Even in the Budget speech which was broadcast last night, it was quite apparent that the Commonwealth's total income tax revenue was about to increase substantially during the current year, even though the rates were being reduced. It is quite possible that the Commonwealth could give up estate duty without feeling any severe strain—particularly if it were done progressively over a period.

Where does the truth lie in this question of probate duty and its abolition? Petitions are circulating in the community at the present time advocating the abolition of probate and estate duty. Many people—and, indeed, many good people—have signed these petitions in perfect good faith, because probate and estate

duties are a matter of very great concern to them. Indeed, there may be good reason for their concern.

Before discussing the prime causes of that concern, I want briefly to deal with the legislative position so far as the imposition of death duties in Western Australia is concerned. Firstly, to deal with the position under State legislation, the relevant section under which duty is imposed is section 66 of the Administration Act. This provides that all real and personal property of which a person dies possessed within Western Australia and all personal property, wherever situated, must be made the subject of a return and duty is assessable thereon. The values at the date of death must be set out in the return and other particulars must be supplied concerning the beneficiaries, and this is what determines the rate of duty. In addition, what is called the notional estate must be included in the return. This is estate which, although not actually owned by the deceased at the time of death, nevertheless is deemed to be his property for the purpose of assessing duty. This consists, for example, of gifts of property which were made by the deceased within three years of his death as well as interests in joint tenancies, etc. The debts of the deceased must be particularised and an amount of up to \$200 may be claimed in the estate of the deceased on account of funeral expenses.

The assets include everything of which the deceased died possessed—his land, stock, grain, crops, plant, debts due to him, interest in another deceased estate, clothing, trinkets, jewellery, motorcar—every conceivable item which comes within the definition of "property" as known to the law. Duty is assessed on the aggregation of this property at rates declared by Parliament. In other words, the property is aggregated or added together and the percentage rate is fixed according to the total value of the property, including the notional estate. So if one particular item is increased by the probate authorities on the ground that it has been undervalued, this will have the effect of raising the overall percentage and increasing the amount of duty payable.

There are some concessions. Under section 79 (2) of the Act a concession of up to \$7,500 may be claimed in respect of a joint tenancy of the principal matrimonial home. In addition, the Treasurer has the power to defer payment of duty in respect of a dwelling house until the death of the surviving spouse where the total value of the estate does not exceed \$20,000, and on certain other conditions.

Also, duty is assessed under section 82 on what are called "settlements." Settlements include deeds of trust and documents other than wills whereby property has been conveyed by the deceased during his lifetime. A return has to be lodged

in respect of each settlement, and duty on settlements is not aggregated in with the rest of the estate. Settlements are assessed separately, so there is a concession in the rate of duty applicable to them.

In addition, there is what is called succession duty which relates to certain other non-testamentary dispositions, or other conveyances of property not made by will under section 90. Succession duty really means the duty which is leviable on the acquisition of assets where a survivor receives a beneficial interest in property as a result of the death of some person.

The Hon. F. J. S. Wise: It becomes very involved in a large estate.

The Hon. I. G. MEDCALF: Yes. Succession duty also applies to life assurance policies which might have been assigned by the deceased during his lifetime where the deceased continued to pay the premiums.

There is one exception to succession duty which is quite noteworthy; that is for a *bona fide* superannuation or pension scheme or arrangement. This exception was made by Parliament in comparatively recent times and appears in section 90(3). No succession duty is payable in respect of such superannuation or pension schemes. However, general probate duty is payable in respect of those superannuation or pension schemes if they can be brought within the general estate of the deceased; and if general probate duty is payable, it is at a higher rate than succession duty.

I now turn to the provisions relating to Commonwealth estate duty. Here again, the rates are prescribed by Parliament, and the property which is dutiable includes the whole of the property of which a deceased dies possessed. In addition, it includes gifts made within three years of death, and the surrender of interests in property by the deceased within the same period. It also includes the deceased's interest in a joint tenancy, even though that interest will have automatically passed by survivorship to some other person, and also assigned life assurance policies where the deceased paid the premiums. So that for Commonwealth estate duty all these items are lumped together in one aggregated sum.

An estate duty return has to be prepared and forwarded to the Taxation Department. This is entirely separate from the statement of assets and liabilities prepared for probate duty purposes.

I pause here to make it clear that there is no connection whatever between an estate duty return and a statement of assets and liabilities. They are two separate returns, one for the State and one for the Commonwealth, although they both deal with the same general thing; that is, death duty. The separate returns deal

with death duties in different ways under different Acts; hence it is necessary to lodge two separate returns.

The values which are placed on the assets by the Federal and State authorities are sometimes different, so that an asset could be valued at one figure by the State and at another figure by the Commonwealth. There is no obligation on either the State or the Commonwealth to reconcile their figures, and the only recourse of the personal representative of the deceased is to lodge an objection in whichever case he considers to be unreasonable.

Provision is made for concessions to be made both by the State and Federal authorities for quick succession; that is, if two persons die within five years of one another there are provisions for concessions to be made in certain cases, depending upon the proximity of their deaths within the five-year period, and the relationship. In addition, there are concessions for persons who die on war service, and concessions for primary producers which were introduced in the 1969 Federal Budget.

In the case of primary producers the exemption levels were raised by about 20 per cent. and additional rebates were granted where the net value of the primary producer's estate did not exceed \$250,000.

The most convenient way of examining the actual amounts of duty payable is to combine the State and Federal provisions, which can be considered under four categories. I should explain that there are differences in the concessional rates of the Commonwealth and the State, but for the purpose of simplification we can consider State and Federal duties together under four categories. The first table, which allows the maximum concession, applies to an estate which passes to a widow, widower, children under 21, wholly dependent adult children, or a wholly dependent widowed mother of the deceased. As I mentioned earlier, no State probate duty is payable until the aggregate value of the assets exceeds \$15,000 in this case, and no Federal duty is payable until the aggregate value exceeds \$20,000. The figures are as follows:—

Value of estate	Total Federal and State duties
\$	\$
30,000	2,252
50,000	6,415
100,000	22,993
200,000	75,459

In respect of an estate of \$30,000 the State's share of the combined duties amounts to \$1,950.

The second table, where the concessions are not so great, applies where the estate passes to children over 21 years not wholly dependent, and other issue. State duty

commences here above \$5,000 and Federal duty above \$20,000. The figures are as follows:—

Value of estate	Total Federal and State duties
\$	\$
30,000	2,493
50,000	6,463
100,000	23,753
200,000	76,864

It will be noticed that there is very little difference between categories one and two, as I have called them. The third table or category applies to an estate passing to brothers, sisters, or parents of a deceased. The figures in this category are—

Value of estate	Total Federal and State duties
\$	\$
30,000	3,999
50,000	9,302
100,000	26,646
200,000	81,749

The fourth table applies to an estate which passes to any other beneficiaries, and the figures are—

Value of estate	Total Federal and State duties
\$	\$
30,000	4,275
50,000	9,739
100,000	27,537
200,000	83,959

Here again, it will be observed that there is not very much difference between the third and fourth tables. Certainly in the higher ranges there is very little difference between all four tables.

I should add, too, that duty is also payable, in whatever other State assets are situated, in addition to the Commonwealth and State duty. For example, if a person dies domiciled in Western Australia leaving, say, company shares in a company on the Victorian register, then Western Australian duty, Federal duty and, in addition, Victorian duty in respect of the asset that is located in Victoria are payable even though the deceased was domiciled in Western Australia.

The Hon. W. F. Willesee: They would need to be pretty healthy shares.

The Hon. I. G. MEDCALF: Yes, indeed. However, I should add there is provision for a rebate of Victorian duty in Western Australia in accordance with the formula set out in section 70A of the Administration Act. That means there are three amounts of duty payable on the one asset, subject to the provision for a refund in respect of the third amount. In addition a fourth amount of duty applies to certain categories of companies; for example, to certain companies which, though not incorporated in New South Wales, carry on mining, timber getting, pastoral, or agricultural pursuits in New South Wales.

Those companies are liable for New South Wales death duty and are entitled to recover the amount from their shareholders.

As far as Queensland companies are concerned, if they are simply incorporated in Queensland duty is also payable in that State. I have not heard of anybody paying five amounts of duty on the one asset, but I suppose it is theoretically possible. We could have a Queensland timber company operating in New South Wales and with shares on the Victorian register in relation to a deceased who was domiciled in Western Australia.

Before duty is assessed by the various authorities, inquiries have to be made, and this is perfectly proper. The commissioner requires bank statements, cheque butts, and any other available information he wishes to be supplied with and this, of course, also applies to all the other authorities who assess duty, apart from our own commissioner in this State. It takes quite a while for these inquiries to be made—sometimes many months—because correspondence is involved and also accountants, solicitors, and relatives are involved. All sorts of searches have to be made amongst the effects of the deceased before the information is collated. Sometimes they never get the information.

If, when the assessment is made, the duty is not paid on the due date, the Federal Taxation Department levies interest at 10 per cent. In that respect, the position is almost identical with the income tax provisions. If the State assessment is not paid the commissioner has power to levy interest not exceeding 8 per cent.; and he has power to postpone the date when interest commences. Hence, as soon as the assessment is made, it is necessary for the estate to find the capital somewhere with which to pay the duty.

This uneconomical system provides for two collecting authorities in every State for the same item, namely death duties, and by two separate methods. If nothing else is done, surely this position ought to be rationalised; surely, if possible, we should not allow a situation to continue where we have two separate collecting authorities in every State using two separate methods to collect the same commodity—if we can call death duty that.

Surely it is in the interests of both the public and the private purse for this to be rationalised; in the interest of the public purse because of the saving in administrative costs if there could be one return, and in the interest of the private purse because of the additional expense involved in completing returns, and answering requisitions, and the delay in realising assets in estates.

Having summarised the general legislative provisions, I should now like to consider whether there are, in fact, some

legitimate grievances voiced by members of the public over probate and estate duties. When considering this question I think it is necessary to look at the problem from the point of view of the public rather than the point of view of the civil servant who is quite properly administering the Acts in accordance with what the Parliaments have prescribed. Also, we should not view the position from the point of view of the legislator who is quite properly legislating to provide for revenue, nor from the point of view of the professional administrator who is ensuring that the right thing is done by the estate and in complying with the legislation.

We should look at this matter from the point of view of the uninitiated member of the public who, perhaps for the first time, and perhaps for the only time, in his life is confronted by the death of some near relative. Maybe such person has the responsibility of looking after the interests of the next-of-kin; in other cases, perhaps, without any death having occurred, such person may be contemplating his own death and thinking about what will happen to his next-to-kin and how he can provide for them when he dies. We should try to look at the position from that person's point of view and see whether he may perhaps have any legitimate grievances.

Firstly, death involves a situation which is highly charged with emotion. The relatives who are affected by death are usually in a very delicate frame of mind, naturally, and they have misgivings about the future because their income has been cut off and the breadwinner has died. In such case, their major source of revenue has gone and all they can think of is that they will get a large bill from the State. They wonder what will be left to provide for them when the bill is paid.

The Hon. A. F. Griffith: The person who has died will not get the bill.

The Hon. I. G. MEDCALF: Perhaps public officials could have more discretion in the application of the law; perhaps some of the inquiries they make, which seem to the relatives to be of a pettifogging nature and have a more theoretical than practical value, need not be made. Perhaps this is an aspect that could be looked at.

Secondly, estates notoriously take a long time to administer. There are various duty requirements and the other matters of which I have spoken; there are the intricacies of probate law; there are differences between Federal and State practices and Federal and State law; and there is the fact that those laws are separately administered in a different manner by different public officials.

Just as there is one income tax return it would be desirable to have one death duty return with one collecting authority



and one set of laws. I realise that what I am saying may be thought by some to be an ideal situation; because, in practice, when one says, "How would we implement this?" one immediately comes up against constitutional problems in that the Commonwealth cannot legislate differently for each State and each State has its own individual probate requirements.

Nevertheless, I believe that is a problem which could and should be tackled on a Commonwealth-State basis. The present system which is wasteful in terms of manpower, expense, and delay, should be rectified. Also, why cannot the States agree to tax their own citizens only, confining their activities to their own domiciled citizens so far as death duties are concerned and forgetting the other people who happen to have put property within their jurisdiction? If this were handled by agreement between all the States, would the States really lose by it?

The Hon. A. F. Griffith: What about the persons who do it purposely to evade duty?

The Hon. I. G. MEDCALF: I do not think that matters very much. After all, the State gets duty from the persons domiciled within the State, and the persons to whom the Minister refers would still have to pay duty—their estates would be liable for duty in the State in which they were domiciled. Duty would still have to be paid one way or the other. If a person were domiciled in New South Wales and he had shares in this State, under my proposition his estate would still have to pay the New South Wales duty because he is domiciled there.

What I suggest could be done by agreement and it would save another set of administrative requirements. I realise that in one way we might lose, but I doubt whether the loss would be very great. Such a move would require the concurrence of all States, but I believe it is a case where Western Australia might consider setting a lead to the other States.

Another cause of concern to people in this situation is: How can they provide for their dependants when their estates are tied up? The assets are released by the Probate Commissioner only on the condition that they are used, firstly, to pay duty. Therefore, as soon as a death occurs the estate is, in effect, quite definitely, practically, and legally tied up. Still another question asked is: How long will the estate take to wind up? This question is asked every day by somebody, and it is almost an impossible one to answer. It is a serious situation and a major concern to people that we cannot tell persons interested in estates which are legally bound over to the Crown how long it will be before they can get some money.

The Hon. F. J. S. Wise: Even if there is only one beneficiary.

The Hon. I. G. MEDCALF: That is so. Then the question is asked: How can my dependants be provided for while all this is happening? Of course, it is possible to provide for them by the use of various subterfuges, by the generosity of bank managers who open special accounts, and by careful planning. There are ways in which it can be done.

The Hon. W. F. Willesee: Will you elaborate on the term "careful planning"?

The Hon. I. G. MEDCALF: I mean careful planning by the person before he dies. The situation is governed by section 119 of the Administration Act which reads, in part—

... in any case where any shares, stock, debentures, money on fixed deposit, policy of life assurance, or policies of life assurance exceeding in value in the aggregate exclusive of any bonuses or benefits payable thereunder the sum of two thousand dollars, or any other property stand in the books in Western Australia of any corporation, company, or society carrying on business in Western Australia, in the name of any deceased person, either alone or jointly with any other person as owner, no dealing with any such shares, stock, debentures, money on fixed deposit, policy of life assurance, or property shall be registered, recorded, or otherwise given effect to, or such policy satisfied by such corporation, company, or society having notice of the death of the deceased, unless the Commissioner certifies in writing in the prescribed form that all duties in respect of the said shares have been paid, or that proper security has been given for the payment thereof or that the Commissioner consents to the proposed dealing.

I must say the commissioner is most reasonable in giving his consent; but he has to look after the State's revenue and he makes it a term of his consent—at least so far as I know—in the normal case that the assets must be used or reserved primarily for the payment of duty. I think we could well provide for exemption from duty for assurance policies which are designated as being available for probate duty only. So long as the policy is used for that purpose, where it is taken out for probate, and is designated as being probate assurance, I think it should be exempt from duty.

This is not really a terribly revolutionary idea; it was the law before, but the provision in question was amended. Assurance policies were brought into the general estate and the effect of this was that although these were policies which had been taken out to pay probate duty they were included in the assets, or the total

volume of the estate, which brought the estate into a higher category for duty purposes.

The Hon. F. J. S. Wise: Does that affect an assigned policy?

The Hon. I. G. MEDCALF: Yes, unless it comes under the succession duty provisions when it is not so aggregated.

Further, I believe insufficient recognition is given to the position of a widow with dependants. To take an example, let us consider an estate of \$100,000 which includes, among other things, a farm or a business. In the case of a widow without any children who, herself, runs another business—in other words, a non-dependent widow—the duty payable is \$23,000 approximately. On the other hand, if that \$100,000 estate, with its farm or business, is left to a widow who has 10 dependants, and no separate means, and the 10 dependants include babes in arms, exactly the same duty is payable; namely, \$23,000.

Take another case where the same sized estate is left to a self-supporting son. The duty payable would be \$23,750, which means that there is an allowance of \$750 only for a dependent widow. We have to consider, too, that a widow may have a number of small children to look after, particularly if the deceased was a comparatively young man. It then means she is faced with formidable problems—problems which she cannot possibly herself surmount without assistance from capable relatives or friends and advisers.

I think therefore that the case for more concessions for widows with *bona fide* dependants is unassailable.

Another grievance which many people have, and is a cause of concern to them, is the method of valuation used. For example, take the typical case of company shares. Shares fluctuate in price considerably, as we can see from the Stock Exchange reports, but the valuation at the date of death is the only relevant figure of which the probate authorities take any notice. It is quite proper that that value should be taken, because that is the actual value at the date of death and there is nothing that can be done about it. If the shares decrease in value considerably subsequent to the date of death the estate would still have to pay the duty based on the value as at the date of death.

A recent case quoted in the newspapers concerned Poseldon shares. Their value was shown as being \$200 a share at the date of death, but the executors had to sell the shares when they were at \$85 a share in order to pay the duty. Perhaps that was an exceptional case, but nevertheless the principle applies.

It should be possible to find some way of averaging the values so that a fair average of the assets can be arrived at, rather than use an exceptional or special value of the asset at the date of death.

This applies not only to shares but to any other form of property, such as land. A saleable farm two years ago when the deceased owner died might be very hard to quit at the present time; and there are many similar illustrations which I could use.

I suggest there is a good reason for bringing in some system of averaging the value over a period prior to the date of death. It is true that sometimes assets increase in value after the date of death of the owner, but by and large we must cater for cases involving assets which become unsaleable from the date of death until the period has passed before the duty has to be paid. These include assets which have depreciated in value, or assets sold by the deceased on long terms. A deceased person might have sold his farm on terms of \$15,000 each year over 10 years. How will the estate be able to meet the duty when the assessment is received 18 months after his death? The estate is only being paid at the rate of \$15,000 a year. This is another case in respect of which the Commissioner of Taxation should be given greater discretion. The capital has still to be found to pay the duty, otherwise the money has to be borrowed for this purpose, and on this money interest is chargeable.

It was, indeed, very pleasing to hear His Excellency the Governor say at the opening of this Parliament that consideration would be given at the time of the framing of the Budget to amending the Administration Act to permit probate duty concessions being granted.

I wish to make a number of suggestions, some of which are applicable to the State Government, some to the Federal Government, and some to both Governments. I express the hope that the Treasurer and his officers will consider these matters in the framing of the Budget. The following are the suggestions which I make:—

(1) That the existing exemption levels below which no duty is chargeable be raised. In Canada and the United States of America I understand the lower level is \$50,000.

(2) That there should be greater allowances by way of exemption for widows and dependent children. Some sort of sliding scale for dependants could well be introduced.

(3) That consideration be given to reviewing the present method of valuing assets, taking the valuation at the time of death and averaging it over a period; and adopting whichever is the lesser of the two. This is not a fanciful idea when we consider that farmers are receiving concessions in the form of higher exemption levels in Victoria, South Australia, the United Kingdom, and now under the Commonwealth assessments.

(4) That the same concession as applies to joint tenancies should apply to other forms of ownership of the matrimonial home up to \$7,500 where it passes to a spouse. There is logic in this suggestion, because we now confer a special advantage on a joint tenancy. I realise this was a concession made by this Government—and it is a very valuable concession—but I feel the time has arrived when, perhaps, we should give consideration to this concession being extended to other forms of ownership of the matrimonial home where it passes to a surviving spouse, irrespective of whether it is held under joint tenancy, tenancy in common, or in the name of the deceased alone.

The Hon. W. F. Willesee: A house held under joint tenancy is a fairly simple form of ownership.

The Hon. I. G. MEDCALF: So is the situation where a person owns the home in his own name.

The Hon. A. F. Griffith: A joint tenancy is an uncomplicated situation.

The Hon. I. G. MEDCALF: So is the situation where a person owns his home himself.

The Hon. A. F. Griffith: That is more complicated than a joint tenancy arrangement.

The Hon. I. G. MEDCALF: It is quite a simple situation for one person to own a house. I cannot see the logic of not extending this concession. I would commend this suggestion to the Government. To continue with my suggestions—

(5) That greater discretion be allowed to the commissioner to grant time or terms for payment of duty without penalty, where he is satisfied that there is genuine hardship by reason of depreciated or unsaleable assets, and in similar cases.

(6) That *bona fide* superannuation or pension funds be exempt from probate duty up to a reasonable limit, along the lines of the limits imposed thereon by the Federal Commissioner of Taxation for income tax purposes. Likewise, life assurance policies written under trust should be exempt up to the same figure, as in the United Kingdom. In the United Kingdom it is possible to write life assurance policies under trust for beneficiaries, and they are completely exempt from death duty. They are analogous to superannuation funds, and I think they should be treated under the same heading. Already a wife can take out a policy on her husband's life; and, so long as she has a separate income, it is exempt from duty in his estate. For that reason would

it not be reasonable to allow a person to take out a policy for a defined limit for the benefit of his beneficiaries without duty being payable, just as he might invest in a superannuation fund for the maintenance of his beneficiaries after his death?

(7) That clothing, trinkets, and minor personal articles which are of no real consequence to the probate authorities be exempt from duty.

(8) That consideration be given to the exemption of life assurance policies where they are specifically designated as being for the purpose of payment of death duties to the extent to which such proceeds are used for that purpose.

(9) That the State Government should move for the adoption of a policy by all States to restrict themselves by levying duty on estates of their own domiciled citizens only, and not those of persons domiciled in other States of the Commonwealth to whom they are not answerable. In the meantime Western Australia should consider giving a lead in this matter.

The Hon. G. C. MacKinnon: Would there not be some loopholes which would enable people to move their place of domicile artificially?

The Hon. I. G. MEDCALF: No. Domicile is a matter of law. A person must be domiciled somewhere, unless he is a stateless person who is travelling round and round the world on a ship or in an aircraft.

The Hon. G. C. MacKinnon: But a State could lower its rates.

The Hon. I. G. MEDCALF: If anything of that sort developed action could be taken. To continue—

(10) That Federal estate duty be progressively reduced and abolished; and that in the meantime a joint Commonwealth-State collection system be introduced in the interests of Government economy, avoidance of delay, unnecessary expense, and inconvenience to the public.

Those are the 10 suggestions I put forward. I have carefully considered these matters over a period and I now seriously commend them to the attention of the Federal Government and the State Government.

The Hon. F. J. S. Wise: Have you had a chance to estimate the impact that these wonderful ideas would have on the State or the Federal Budget?

The Hon. I. G. MEDCALF: The abolition of probate would mean a loss of about \$50,000,000 to the Federal Government. As far as the State Government is concerned, the total amount received from

probate duty is in the vicinity of \$6,000,000. I do not think the reforms I have suggested would make a great deal of difference to the State collections, but they would overcome many of the legitimate causes of concern which I have attempted to deal with.

Debate adjourned, on motion by The Hon. E. C. House.

House adjourned at 5.40 p.m.

## Legislative Assembly

Wednesday, the 19th August, 1970.

The SPEAKER (Mr. Guthrie) took the Chair at 4.30 p.m., and read prayers.

### QUESTIONS (61): ON NOTICE

#### 1. EDUCATION

##### *Meckering School*

Mr. McIVER, to the Minister for Education:

- (1) Will the new school at Meckering be connected to the deep sewerage?
- (2) If not, why not?

Mr. LEWIS replied:

- (1) Yes.
- (2) See answer to (1).

#### 2. EDUCATION

##### *Wundowie Junior High School*

Mr. McIVER, to the Minister for Education:

- (1) Does he agree that the staff room at Wundowie Junior High School is most inadequate?
- (2) When will funds be made available to overcome the problem?

Mr. LEWIS replied:

- (1) Yes.
- (2) The department has this work listed for consideration in the current building programme.

#### 3. HOUSING

##### *Northam*

Mr. McIVER, to the Minister for Housing:

- (1) Would he itemise the commission's building programme for Northam in 1970-71?
- (2) Would he indicate the localities where they are to be constructed?

Mr. O'NEIL replied:

- (1) Ten cottages are planned for commencement about February, 1971.

- (2) These units are to be built on Lots 15, 16, 17, 19 Rushton Crescent; Lot 20 Fernie Street, and Lots 2, 4, 5, 6, 7 Toodyay Road.

4. and 5. *These questions were postponed.*

6. *This question was withdrawn by the Member for Warren.*

7. *This question was postponed.*

#### 8. ARGENTINE ANTS

##### *Infestation*

Mr. RUSHTON, to the Minister for Agriculture:

- (1) Has there been any significant increase in infestation by argentine ants in the last three years?
- (2) In what areas have new infestations been reported and proved over the past three years?
- (3) How many stock have been killed from spray used to combat infestations prior to and during the last three years?
- (4) In what locality and over what acreage are the argentine ants infesting?
- (5) What has been the cost of the argentine ant protection programme since its inception and for each of the last three years?

Mr. NALDER replied:

- (1) No.
- (2) Albany, Augusta, Margaret River, Balingup, Bunbury, Busselton, Harvey, Jarrahdale, Metropolitan Local Government Districts, Wagin.
- (3) Since the inception of the campaign in 1954 until 1967, 16 cows and 13 horses have died. In the last three years, two horses have died. These deaths were due in each case to disregard of advised safety precautions.
- (4) Metropolitan local government districts—658 acres.  
Country districts—6 acres.  
Containment areas—2,300 acres.
- (5) Cost of the argentine ant campaign since its inception—\$1,784,575.  
Cost 1967-1968 .... \$53,977.  
1968-1969 .... \$57,664.  
1969-1970 .... \$56,778.

#### 9. RURAL AND INDUSTRIES BANK

##### *Homes: Land Tax*

Mr. LAPHAM, to the Treasurer:

- (1) Do purchasers of homes through the agency of the Rural and Industries Bank have to pay land